



Kozinn

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: A&C Building and Industrial Maintenance Corporation

File: B-230270

Date: May 12, 1988

DIGEST

1. A protest that solicitation provisions are ambiguous because they are insufficiently specific is denied where all provisions to which the protester objects reasonably describe the work to be performed. The mere presence of risk in a solicitation does not render it inappropriate, and offerors are expected to consider the degree of risk in calculating their prices.

2. Agency decision to use negotiation procedures in lieu of sealed bidding procedures to acquire janitorial services is justified where the agency reasonably concludes that discussions with the responding offerors are necessary to ensure offeror understanding of requirements.

DECISION

A&C Building and Industrial Maintenance Corporation protests the specifications in request for proposals (RFP) No. 87-11, issued by the Library of Congress for janitorial services for the James Madison Memorial Building and the John Quincy Adams Building. Those services are being solicited for the John Quincy Adams Building for the first time. A&C contends that the RFP for a firm, fixed-price contract is ambiguous and lacks sufficient information regarding the services to be performed to enable potential offerors to prepare their proposals and that sealed bidding rather than negotiation procedures should be utilized.^{1/}

We deny the protest.

^{1/} In its protest letter of February 22, 1988, A&C also contended that the procurement should have been a small business set-aside. Since A&C failed to respond to the agency's rebuttal to this protest issue, it is deemed abandoned. See The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218.

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The RFP was issued on December 11, 1987, with an extended closing date scheduled for February 22, 1988, at 2 p.m. A&C filed its protest with our Office on February 22, hours before the closing date.

The RFP asked for proposals to provide janitorial services, including regular cleaning, maintenance, and spot cleaning as needed, for two of the Library's buildings, one of which is under renovation and has not previously been cleaned by private contractors. The record indicates that all offerors were provided with the floor plans and the approximate square footage of the two buildings. The RFP urged all offerors to inspect the sites to satisfy themselves as to all the conditions that might affect the cost of contract performance.

The Library contends that the solicitation contains sufficiently detailed information for offerors to submit intelligent proposals. Further, the Library specifically acknowledges that since part of the present requirement is for a first-time procurement, it expected that questions regarding the Library's needs and how the contractors proposed to satisfy those needs would be answered through the opportunity for on-site visits as well as through discussion and negotiation with all prospective contractors. A&C participated in a walk-through inspection of the premises on January 13, 1988. On January 14, A&C sent the Library a list of questions regarding information it desired as to cleaning frequency and the measurements and locations of the areas involved in the solicitation. The Library asserts that it subsequently issued amendment No. 4 to address A&C's questions, that it held two pre-proposal conferences and that it met with an A&C representative on February 5, 1988, for another site visit and to answer any remaining questions. The Library's position is that A&C has been given all the information necessary to submit a proposal and has also had adequate opportunity to obtain this information.

In its written comments submitted in response to the agency's report on this protest, A&C lists 24 alleged ambiguities remaining in the solicitation regarding the size and location of the areas to be serviced, as well as the frequency and levels of cleaning required. Specifically, A&C challenges the sufficiency of the layout diagrams provided, as well as several provisions that call for particular cleaning services on an "as needed" basis. A&C also questions whether the Library in fact intended many of the solicitation's provisions since A&C believes some of the requirements are undesirable to the Library and do not reflect its actual needs.

The contracting agency is responsible for drafting proper specifications to meet the government's minimum needs. In preparing for a procurement, the agency must develop specifications in such a manner as is necessary to achieve full and open competition in accordance with the nature of the property or services to be acquired. See 41 U.S.C. § 253 (Supp. III 1985). A solicitation must contain sufficient information to allow offerors to compete intelligently and on an equal basis. University Research Corp., B-216461, Feb. 19, 1985, 85-1 CPD ¶ 210. Specifications must not be ambiguous--that is, subject to more than one reasonable interpretation. See Toxicology Testing Service, Inc., B-219131.2, Oct. 28, 1985, 85-2 CPD ¶ 469. However, there is no legal requirement that a competition be based on specifications drafted in such detail as to eliminate completely any risk or remove every uncertainty from the mind of every prospective offeror. Analytics, Inc., B-215092, Dec. 31, 1984, 85-1 CPD ¶ 3. Furthermore, when a protester alleges that the vagueness and generality of specifications prevent the submission of an intelligent proposal, we will analyze the specifications to determine if they adequately detail the agency's requirements, and will also consider whether other proposals were received in response to the RFP in order to determine whether the level of uncertainty and risk in the solicitation was acceptable. Id.

With regard to custodial service contracts, which by their own nature often require computing prices principally based on visual inspections, we have held that the specifications, in conjunction with layout diagrams and the opportunity for on-site visits, generally affords prospective offerors an adequate basis on which to compete intelligently. See Sunnybrook, Inc., B-225642, Apr. 10, 1987, 87-1 CPD ¶ 399; Triple P Services, Inc., B-220437.3, Apr. 3, 1986, 86-1 CPD ¶ 318.

For the reasons set forth below, after reviewing the RFP and relevant documentation here, we cannot find the solicitation deficient or so lacking in information as to preclude an offeror from an opportunity to intelligently prepare a proposal.

First, A&C asserts approximately eight instances in which it merely disagrees with the solicitation's cleaning requirements, questioning whether the Library intended the level and frequency of cleaning stated and contending that such requirements may be "undesirable" and insufficient to meet the actual needs of the Library. A&C does not argue that it cannot comply with the cleaning requirements, but instead states the types of requirements that, in its view, will better serve the needs of the government. For example, it

states that with regard to the compact collection storage area, considering the usage level, that "it is unlikely that the [specified] minimal level of cleaning is . . . desired by the Library." Here, A&C is not alleging that the specification is restrictive with respect to these requirements, or that it is ambiguous, or that the work itself is unnecessary; rather, A&C simply argues that, in its judgment, there are better methods for accomplishing these objectives. It is the contracting agencies, however, that must determine the needs of the government and the methods of best accommodating those needs. In other words, what the protester objects to is within the decision making function of the agency and is not subject to the type of objection raised by A&C. Bataco Industries, Inc., B-212847, Feb. 13, 1984, 84-1 CPD ¶ 179.

A&C also contends that the solicitation is defective because it refers to drawings and an "LSSO schedule" which were not attached to A&C's copy of the solicitation. A&C also complains that the solicitation fails to define the measurements and parameters of certain locations listed in the solicitation. Specifically, A&C claims it was not given the locations of conference rooms or square footage of the different areas to be cleaned. The solicitation itself provides that all referenced documents would be made available to the contractors and any necessary information that is not available from the drawings could be obtained by visits to the sites. The affidavit of A&C's president indicates that he did request and receive plans of the two buildings which do identify conference rooms and other areas under the contract and provides approximate square footage. In addition, although A&C argues that the site visit it attended on January 13, 1988, was inadequate as only a small sampling of the buildings were visited, there is no indication in the record that any potential offeror has been denied the right to see any area of the buildings that it asked to inspect. In fact, the record indicates that A&C made a second visit to observe the sites. We fail to understand why the information provided and the several site visits were not adequate for A&C's preparation of a proposal. While computing prices based on such inspections might involve an element of risk, we have recognized that some risk is inherent in most types of contracts, and offerors are expected to allow for that risk in computing their proposals. See Bru Construction Co., Inc., B-228206, Nov. 10, 1987, 87-2 CPD ¶ 476.

Similarly, find no merit to A&C's protest of the solicitation's requirement for special or additional cleaning services on an "as needed" basis, since A&C essentially seeks to have the solicitation restructured to eliminate any risk that the contractor will be required to furnish

services without specific compensation. While there may again be risk in formulating proposals on an "as needed" basis, we think that a contractor, such as A&C, with substantial experience in similar janitorial service contracts, should properly allow for that risk in preparing its proposal. As for A&C's request for historical data as to the number and kind of requests made previously by the Library on an "as needed" basis, considering the fact that much of the services requested are being procured on a first-time basis, we do not find that such information was readily available or would necessarily provide a more accurate basis for offerors to prepare their proposals than the information provided by the Library or obtained by the site visits. Id.; See Triple P Services, Inc., B-220437.3, supra.

As to A&C's remaining allegations of ambiguity, we point out that our Office will reject allegations that specifications are subject to more than one interpretation if those allegations are based on an unreasonable or dubious interpretation of the solicitation and the requirements are stated clearly. American Industries, B-223530, Oct. 15, 1986, 86-2 CPD ¶ 429. The protester has not persuaded us that the remaining alleged ambiguous provisions can reasonably be interpreted in more than one way. The solicitation explicitly states that industry standards and practices will govern and, in our view, each provision cited by A&C may be reasonably interpreted by reading the solicitation in whole. For instance, with regard to A&C's question of whether daily or monthly cleaning is required in the Exhibit Hall, the solicitation requires continuous policing and full maintenance 7 days a week for public space which clearly applies to the Exhibit Hall. In our view, daily care is the only reasonable interpretation. Likewise, regarding the requirement for policing the stairs on a "full time basis," A&C's interpretation that 24-hour policing may be required is unreasonable since an 8-hour day is the admitted industry standard and the solicitation states that policing is to be done during daytime hours.

Futhermore, we point out that the solicitation distinctly allows for contractors to submit alternate proposals, and provides the opportunity for contractors to submit as part of their proposals questions and concerns to be addressed during discussions. We find that the specifications could have been reasonably interpreted by A&C or, at least, A&C could have availed itself of the opportunity to submit alternate proposals or attach a list of its concerns.

We note that the Library accepted proposals from a substantial number of firms, none of which complained of the solicitation. It thus is apparent that other offerors were

able to compete, and did not express concern regarding the alleged lack of detailed information. Moreover, the Library states that the same specifications have been used since 1979, on two prior 3-year contracts for janitorial services for the Library's Madison Building. The prior contracts were awarded without changing the specifications from those in the solicitation and no disputes arose as to interpretation and performance of the specification requirements. A&C's protest that the solicitation failed to provide sufficiently detailed information is therefore denied.

A&C also contends that sealed bid procedures rather than negotiation should have been used since if the alleged ambiguities are removed from the solicitation, award could be made based on price and price-related factors alone.^{2/} Under the Competition in Contracting Act of 1984 (CICA), agencies are required to obtain full and open competition and to use the competitive procedure or combination of competitive procedures best suited to the circumstances of the procurement. 41 U.S.C. § 253(a)(1)(B) (Supp. III 1985).^{3/} The fact that a contract award will be based on price and other price-related factors is not dispositive of whether sealed bidding procedures should be used; the agency also must judge whether time permits their use, whether it is necessary to conduct discussions with the responding sources, and whether there is a reasonable expectation of receiving more than one bid. 41 U.S.C. § 253(a)(2); Federal Acquisition Regulation § 6.401 (FAC 84-5). The determination regarding which competitive procedure is appropriate essentially involves the exercise of business judgment by the contracting officer. Essex Electro Engineers, Inc., 65 Comp. Gen. 242 (1986), 86-1 CPD ¶ 92.

Here, the contracting officer determined that discussions are necessary to ensure that offerors fully understand the services required to adequately perform the contract. The solicitation included a first-time procurement for janitorial services for one of two buildings to be serviced

^{2/} This solicitation provides for award to the vendor submitting the most advantageous proposal, but lists and assigns weight to technical/management factors and to cost which is worth 50 percent of the total points allocated.

^{3/} Although the Competition in Contracting Act of 1984 (CICA) generally applies only to executive agencies, which does not include the Library of Congress, the Library's submissions indicate its decision to negotiate was based on CICA, as implemented by the Federal Acquisition Regulation, and therefore our analysis is based on CICA.

which is also under renovation, the specifications were detailed and varied, and it reasonably could be expected that offerors would raise concerns regarding the specifications which would make discussions necessary. If anything, A&C's actions culminating in its protest of the specifications support the agency's judgment that discussions were necessary. We therefore find that the Library's decision to use negotiation procedures is not objectionable. See Military Base Management, Inc., B-224115, Dec. 30, 1986, 66 Comp. Gen. _____, 86-2 CPD ¶ 720.

The protest is denied.

fn *Ronald Berger*
James F. Hinchman
General Counsel